

But if it be a mere device or contrivance, by which the husband, not parting with the absolute dominion over the property during his life, seeks, at his death, to deny his widow that share of his personal estate which the law assigns to her, then it will be ineffectual against her.

One of the badges of fraud in such cases, is the retention of the possession of the property by the husband, after the transfer of the title, or keeping the deed in his hands after its execution. *Smith vs. Fellows*, 2 *Atkinson*, 62, 377.

In *Hall vs. Hall*, 2 *Vernon*, 276, the court said, if goods are absolutely given away in his lifetime, this will stand good against the custom (under which the wife claimed.) But if he has it in his power, as by keeping of the deed, &c., or if he retains the possession of the goods, or any part of them, this will be a fraud upon the custom, and of course will not prevail against the claim of the wife.

In 2 *Roper, on Husband and Wife*, pages 17 and 18, the author, after reviewing the cases, lays down this rule as the true one to be extracted from them ; that, if the act (of alienation) be accompanied with the delivery of the property, and every thing is done, (so far as it can be,) before the husband's death intestate, to give effect to the transaction, and there is no reservation, and the husband divests himself of all interest in the property, then the act will be necessarily valid, as a due exercise of his admitted right whilst life remained, to dispose of his property in bar of the custom.

It is, therefore, very material in this case to ascertain whether Hays, the husband of the complainant, did part with the possession of the property in question.

That it was purchased by him, and paid for with his money, I entertain no doubt ; and, I am persuaded, that the utmost ingenuity will in vain seek to create a doubt upon the subject in opposition to the mass of evidence to be found in the record.

It was purchased of Mr. Perine, and by that gentleman, on the 2d April, 1844, conveyed to the defendant, Charlotte Henry, by the direction, as may be inferred from the proof, of